

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

DODSON LUGENE BALLARD

§

v.

§ CIVIL ACTION NO. 6:10cv174

DIRECTOR, TDCJ-CID

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND DENYING PETITIONER'S MOTION FOR RECONSIDERATION

The Petitioner Dodson Ballard, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of disciplinary action taken against him during his confinement in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Ballard complains of an aggravated assault conviction which he received in July of 1999, for which he was sentenced to 40 years in prison. His federal habeas corpus petition was dismissed because of the expiration of the statute of limitations on October 29, 2010.

On November 12, 2010, Ballard filed a motion for reconsideration. This motion contended that his claim of denial of a fair trial is not procedurally barred, the charges against him were filed maliciously, prison officials have been blocking his access to court, the trial judge erred in overruling objections, the prosecutor “incurred a debt” in order to convict him, he filed suit against the victim in his criminal case and the conditions of Heck v. Humphrey have been met, and he has been granted an out of time appeal. Ballard made a passing reference to the statute of limitations but did not

address the Court's conclusion in that regard. In a separate filing, Ballard also sought the issuance of a writ of error *coram nobis*.

After review of the pleadings, the Magistrate Judge issued a Report on November 30, 2010, recommending that the motion for reconsideration be denied. The Magistrate Judge observed that none of Ballard's contentions provided any basis for setting aside the final judgment and that Ballard plainly has not been denied access to court in that he has filed numerous cases in the federal district courts as well as four appeals to the Fifth Circuit Court of Appeals and one petition for writ of certiorari to the United States Supreme Court. The Magistrate Judge also stated that Ballard's petition for writ of error *coram nobis* lacked merit because the writ of *coram nobis* is used when an inmate has completely served his sentence and so habeas corpus is no longer available; in this case, the Magistrate Judge said, Ballard received a 40-year sentence in 1999 and makes no showing that he has completely served his sentence.

In his objections to the Magistrate Judge's Report, Ballard says that an unexplained state-created impediment to his filing the present petition was removed on July 19, 2004, that the constitutional right which he seeks to vindicate was recognized by the Supreme Court on October 25, 2000, and this right was "newly recognized" on November 12, 2010, and made retroactive to cases on collateral review, his access to court has been blocked by his placement on lockdown three separate times, the jurors in his state trial made a mistake, and crucial prosecution evidence was inadmissible because it was unlawfully seized by the police. None of these contentions show any error in the Report of the Magistrate Judge's Report, and a review of Texas case law shows no indication that Ballard has been ordered a new trial. On March 24, 2010, Ballard filed a state habeas corpus petition, his eighth, and this petition was dismissed as successive by the Texas Court of Criminal Appeals on April 7, 2010. Ex Parte Ballard, case no. WR-16,010-08 (available online at <http://www.cca.courts.state.tx.us/opinions/Case.asp?FilingID=273055>). Ballard's objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the Petitioner's motion for reconsideration of the final judgment and petition for writ of error *coram nobis*, the Report of the Magistrate Judge, and the Petitioner's objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Petitioner's objections are without merit. It is accordingly

ORDERED that the Petitioner's objections are overruled and that the Report of the Magistrate Judge (docket no. 30) is ADOPTED as the opinion of the District Court. It is further

ORDERED the Petitioner's motion for reconsideration of the final judgment (docket no. 28) and petition for writ of error *coram nobis* (docket no. 29) are hereby DENIED.

SIGNED this 21st day of December, 2010.



Michael H. Schneider
MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE